Ethiopian Tax System2

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Proclamations and Regulations

- Proclamations and regulations represent the most important sources of substantive and procedural rules on taxation;
- Most proclamations and regulations contain both types of rules on taxation;
- All tax proclamations and regulations are published in the Negarit Gazeta;
- Every individual tax there is has its own proclamation and sometimes regulations: income taxes, VAT, ToT, excise taxes, customs duties, stamp duties.

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- Piecemeal legislation and amendment has been the most important characteristics of the Ethiopian Tax System
- That does not mean there are no common provisions;
- Common provisions – general definition provisions, administrative and/or procedural rules; accounting provisions; dispute settlement provisions are mostly common.
- However, these common provisions are sometimes repeated in each and every individual tax legislation, making the tax system cumbersome, inconsistent and disorganized.

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- Apart from the issuing authorities, there is virtually no distinction between proclamations and regulations.
- Both are substantively weighty.
- Regulations are derivative pieces of legislation while proclamations are original sources of tax law.

Directives

- Directives also represent important sources of tax law and practice in Ethiopia.
- There are many government documents that act as directives, but only some of them are officially issued as directives.
- Those that are issued as official documents are called by the name “Memeriya” in Amharic and Directive in English.
- Many directives are available only in Amharic. Few in English

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- Unofficial directives are issued in the form of internal memos, circular letters, and at times as guides.
- Directives are issued by all administrative bodies that are involved in Tax Administration: MoFED, ERCA, EIA, MoEd, etc. Most of the directives in taxation hail from MoFED and ERCA.

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- In practice, there are no distinctions among directives – all directives exist in an undistinguishable whole. But in terms of functions, directives play three important roles:
- Those that create, modify and extinguish rights and obligations (called **Legislative Directives**). E.g., directives that grant tax exemptions. There are also directives that create obligations – E.g., the directive that requires taxpayers to install and use sales/cash register machines.

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- Those that seek to interpret provisions of principal tax legislations (proclamations and regulations) – **Interpretative Directives**.
- Those that explain various administrative requirements and furnish information on what taxpayers need to do in order to meet their obligations – **administrative and/or procedural directives**.

Issues

- Directives are not published in the Negarit Gazeta;
- Directives are not available in any organized format;
- It is not clear which government documents ought to be called directives;
- There are also legality issues – whether unpublished directives should be binding upon taxpayers , how far directives determine rights and obligations and if taxpayers can challenge directives on grounds that they are ***ultra vires***, **unreasonable or simply illegal.**

Administrative/Advance Rulings

- Advance rulings are administrative opinions given to taxpayers usually in advance of contemplated transactions.
- In many tax systems, taxpayers can request an official statement from the Tax Authorities in order to canvass the position of the Authorities on contemplated transactions.
- Advance rulings protect taxpayers from entering into transactions without a clear idea about the tax consequences of these transactions.

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- Advance rulings promote certainty and predictability in the consequences of transactions.
- In many tax systems, there exist two major types of advance rulings: public and private rulings. Public rulings are usually published and apply to the whole population of taxpayers. Private Letter rulings are not published. They are addressed to requesting taxpayers and are therefore binding with respect to the requesting taxpayer only.

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- In more developed tax systems, there are detailed rules regarding how, when and by whom advance rulings may be issued;
- The consequences of various advance rulings are also well established.
- In Ethiopia, there are no rules and procedures for the issuance of advance rulings.
- But advance rulings exist in practice.

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- A number of taxpayers request by official letters guidance from the Tax Authorities. Many of these requests come from withholding agents who are often unsure about the appropriate withholding rates from the various payments they make.
- These requests are usually routed to the legal departments and sometimes letters are written to the requesting taxpayers. These letters are considered as binding upon taxpayers.

Issues in Advance Rulings

- There are no rules and procedures
- They are heavily decentralized and, as a result inconsistent and incoherent advance rulings are quite common, leading to discrepant practices in taxation.
- Some of the rulings violate the proclamations and regulations, and therefore are/or should be *ultra vires*. But because of the absence of judicial review, these rules often rule the roost in practice.

Administrative Manuals/Guides

- Administrative manuals or guides or materials are important tools in ensuring uniformity in tax administration and educating the public about the various tax laws. The complexity and intricacy of taxation demands the aid of administrative manuals.
- Manuals explain, elaborate, simplify the various tax laws, procedures and rules, and provide guidance for a number of tax officers and taxpayers.
- In Ethiopia, they are few and far between, but they are used.

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- Internal manuals – for auditing, assessment, inspection, for customer services, etc.
- External manuals – for use by taxpayers.
- Instructional materials – prepared and printed for tax literacy.
- Issues: they are scarce; and it is not clear how far these should be binding upon taxpayers, and how consistent they are with tax proclamations and regulations.

Public Notices

- Public notices are used as a vehicle for communicating various notifications to a large number of taxpayers. They carry instructions to taxpayers to either remind them of their existing duties or their new duties. Example: a public notice may be used to announce to a group of taxpayers to register for VAT by a certain deadline.
- Issues: there are no clear procedures for when public notices are appropriate media and whether they can be challenged by taxpayers on grounds of, for example, imposing unreasonable burden upon taxpayers.

Tax Forms

- Tax forms are useful for complying with taxes and paying the appropriate tax due to the Government.
- Tax forms are used to furnish relevant information to the Authorities.
- Example: a VAT form helps registered taxpayers to calculate the VAT on sales and inputs and the amount of VAT due to the Government or refundable to the Taxpayer.

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- Tax forms are an important aid to tax compliance. Most taxpayers only get to read and fill these forms in order to comply with their tax obligations.
- Many tax forms are officially issued by the Tax Authorities in the form of directives (often provided as annexes to a substantive directive).
- There are also a large number of forms that are informally used for computation of taxes.
- But there are serious issues over their consistency with the proclamations and regulations and whether taxpayers can challenge these forms at all.

Tax Cases

- Every year hundreds of tax cases are disposed of by the Review Committee, the Tax Appeal Commissions, and the Courts.
- Most of these cases are not published and not available in the public domain except the extremely few number of cases decided by the Cassation Division of the Federal Supreme Court.
- Tax cases can be an important source of tax norms if they were available in the public domain. Many tax issues are repetitive.

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- Issues: the problem is that Ethiopian tax dispute settlement is so narrow in its accessibility that it raises serious issues about access to justice in taxation Ethiopia.
- Many taxpayers are unwittingly barred from the regular tax dispute settlement schemes because of the narrow channel of dispute settlement in Ethiopia: example: Employees.
- Even for those taxpayers who have the right to appeal, the conditions of the law are often insurmountable for most of these taxpayers.

Newspapers

- Newspapers cover a whole lot of issues in taxation.
- In Ethiopia, the business weekly papers like Fortune and Capital in particular cover tax news on a regular basis.
- The Tax Authorities have one official newspaper, issued monthly – Gebi Lelimat. This newspaper features a number of news, interviews and opinions in taxation.
- The Tax Authorities also use other media- radio, TV and the internet.

Issues

- The issues with respect to these various media is how far taxpayers can rely upon information obtained through these media?

Commentaries

- Commentaries (if and when they are available) come in all sorts of shapes and forms
- There are scholarly commentaries – books, articles, opinions, notes, etc.
- There are student researches.
- There are also foreign texts, commentaries, articles, etc., which might come in handy in understanding the intricacies of Ethiopian tax laws. Many issues in taxation are transnational. E.g., Alan Schenk and Oliver Oldman's VAT material is quite useful.

Tax Administration

- The main tax administration body is Ethiopian Revenues and Customs Authority, which was established in 2008, merging the separate Tax Authorities that were in existence up to that time.
- There are other important tax administration bodies – Ministry of Finance and Economic Development, Ethiopian Investment Agency, Ministry of Justice.
- ERCA has all the powers of tax administration: assessment, collection, investigation, prosecution, and enforcement. ERCA has also important rule making authority in the area of directives and adjudicating tax cases before appeal to the Tax Appeal Commission.

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- The Review Committee is organized by and within ERCA and its various branch offices.
- Therefore, ERCA has legislative (rule making), administrative (enforcement of taxes) and judicial functions (interpretation of tax laws and adjudication of tax disputes).